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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,952	07/03/2003	Mitsuru Endou	009682-123	3513

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EXAMINER

NGUYEN, TUAN N

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/611,952

**Applicant(s)**

ENDOU, MITSURU

**Examiner**

Tuan N. Nguyen

**Art Unit**

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/30/04 &amp; 11/20/03</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because line 6 appears to have multiple words link together. Correction is required. See MPEP § 608.01(b).
2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
3. Claim 1 is objected to because of the following informalities: "and;" in line 13 should be --; and--. Appropriate correction is required.
4. Claim 2 is objected to because of the following informalities: line 3 appears to have grammatical error. Appropriate correction is required.
5. Claim 5 is objected to because of the following informalities: the use of alternative language "or" in lines 3, 5, 6 and 8 is inaccurate, which resulted in the drawing objection and 112 rejection as indicated below. Appropriate correction is required.
6. Claim 6 is objected to for the same reason as claim 5 above.

### ***Drawings***

7. Figures 14 and 15 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled

"Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

8. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "engaging portion is formed... outer wall surface of the barrel body" and the "barrel body is formed with a slit" in claims 5 and 6 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claims 5 and 6 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails the enable for the “engaging portion is formed... outer wall surface of the barrel body” and the “barrel body is formed with a slit” in claims 5 and 6.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 2, 4, 7, 9 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Aston.

In regard to claim 1, Aston discloses a cartridge type applicator comprising: a hollow barrel body (1,2); an applying portion (4) provided so that part thereof is

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projected from the front end of the barrel body; a cartridge tank (5) which can be removably inserted from the rear end of the barrel body and can store the application liquid and supply the application liquid to the applying portion; a sealing plug (27) constituting the rear end wall of the tank; a rod member (26) attached to the sealing plug for causing the sealing plug to move in the axial direction of the tank; and an actuator (33) for causing the rod member and sealing plug to move in the axial direction by rotation thereof.

In regard to claim 2, the Aston device further comprises a tail plug (34) which covers part of the actuator and is unable to rotate relative to the actuator since it is made integral with the actuator itself and is rotatably and removably attached at the rear end part of the barrel body, the actuator is turned by rotating the tail plug in the circumferential direction, whereby the rod member and sealing plug are cause to move in the axial direction.

In regard to claim 4, the Aston actuator is configured so as to provide the function of the tail plug for the barrel body (see Fig. 1).

In regard to claim 7, the Aston tank has in the inner wall at the front end part (29) thereof a socket (32) for a removable sealing element (31) which seals the front end opening, and the inner wall of the socket is formed in a turn-up wall configuration (from end 29) in which a clearance is formed around the inner wall (the inner passage of socket 32).

In regard to claim 9, the Aston tank has in the inner wall at the front end part (29) thereof a plastic socket (32) for a removable sealing element (31) which seals the front

end opening, and the socket is constituted by a substantially pipe-like element formed of a thermoplastic resin molding.

In regard to claims 11-13, the Aston device further comprises an engaging portion is formed in the cartridge tank along the axial direction thereof while an engaging portion is formed in the inner wall of the barrel body in direction thereof so that when the tank is fitted, the engaging portions of the tank and the barrel body engage each other and the barrel body interior and the tank are disabled to rotate relative to the other (see Fig. 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 3, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aston in view of Kageyama.

The Aston reference teaches all of the limitations as discussed above except for that claimed in claims 3, 5 and 6. Attention is directed to the Kageyama reference, which discloses an applicator having a barrel body (12), a sealing plug (22), a rod member (24), an actuator (26), a tail plug (30) having an engaging portion for engaging with the outer wall of the actuator (see Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ, on the

Aston device, the advancing mechanism as taught by Kageyama in order to prevent the piston or sealing plug from retracting due to pressure from the fluid in the tank.

12. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aston in view of Morane et al. (hereinafter Morane).

Although the Aston device does not include an agitator as claimed, attention is directed to the Morane reference, which discloses an applicator having a liquid tank and a sealing member (72) that is capable of providing the function of an agitator on the liquid in the tank. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Aston liquid cartridge tank, a sealing member that can act as an agitator as, for example, taught by Morane in order to provide a seal and an agitator function.

13. Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aston in view of Kay et al. (hereinafter Kay).

The Aston device further includes a removable cap but does not include a removable cap with an inner cap element as claimed, attention is directed to the Kay reference, which teaches an analogous applicator having a removable cap with an inner cap element with an elastic element and stopper projection as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ, on the Aston device, a removable cap with an inner cap element as taught by Kay in order to provide a better seal for the brush head or applying portion.



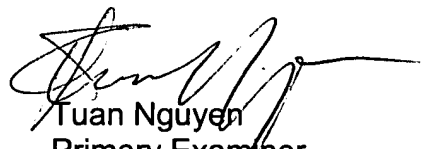
**Conclusion**

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Michel, Sasaki et al., Nigro, and Pitton disclose other cartridge type applicator.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tuan Nguyen  
Primary Examiner  
Art Unit 3751  
5/16/05

TN